

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO: 2:20-CV-08178

NEW WALLINGTON HOME, LLC, a New
Jersey limited liability company; and
MORNINGSIDE AT WALLINGTON, LLC,
a New Jersey limited liability company,

Plaintiffs,

vs.

BOROUGH OF WALLINGTON;
BOROUGH OF WALLINGTON
PLANNING BOARD; MARK W. TOMKO,
in his official capacity as former Mayor of the
Borough of Wallington; DOROTHY B.
SIEK, in her official capacity as former Tax
Collector for the Borough of Wallington; and
CHRISTOPHER ASSENHEIMER, in his
official capacity as Certified Tax Collector of
the Borough of Wallington,

Defendants.

DEPOSITION OF JENNIFER APPICE

DATE TAKEN: December 3, 2024

TIME: 10:00 a.m. - 11:00 a.m.

(Based on Time Zone from Notice)

LOCATION: O'Toole Scrivo, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009

Reported By:
Serena Frey, AAERT No. 3686
Notary Public for the State of New Jersey

Page 2			Page 3		
1	APPEARANCES		1	INDEX TO EXAMINATION	
2			2		
3			3	EXAMINATION OF JENNIFER APPICE	PAGE
4	On behalf of NEW WALLINGTON HOME, LLC, a New Jersey limited liability company, et al.:		4	BY MR. DIGIULIO	6
5	O'TOOLE SCRIVO, LLC		5	CERTIFICATE OF NOTARY FOR WITNESS	50
6	BY: JAMES DIGIULIO, ESQUIRE		6	CERTIFICATE OF REPORTER	51
7	14 Village Park Road		7	CERTIFICATION PAGE FOR AUDIO RECORDING OF A DEPOSITION	52
8	Cedar Grove, New Jersey 07009		8	WITNESS NOTIFICATION LETTER	52
9	jdigiulio@oslaw.com		9	ERRATA SHEET	54
10	APPEARED VIA LIVE		10		
11			11		
12	On behalf of BOROUGH OF WALLINGTON, et al.:		12		
13	PFUND MCDONNELL, PC		13		
14	BY: GERALD A. SHEPARD, ESQUIRE		14		
15	139 Prospect Street		15		
16	Ridgewood, New Jersey 07450		16		
17	gshepard@pfundmcdonnell.com		17		
18	APPEARED VIA LIVE		18		
19			19		
20			20		
21			21		
22			22		
23			23		
24			24		
25			25		

Page 4			Page 5		
1	INDEX TO EXHIBITS		1	P R O C E E D I N G S	
2			2	Deposition taken before Serena Frey, AAERT No. 3686, Digital	
3	PLAINTIFF'S EXHIBITS FOR IDENTIFICATION:		3	Reporter, pursuant to Notice proceeded as follows:	
4			4	THE REPORTER: And we are on the record. I am a	
5	MARKED	PAGE	5	notary public licensed by the State of New Jersey. The parties	
6	Appice Exhibit 1	21	6	agree that I will administer the oath to the witness and create	
7	Appice Exhibit 2	25	7	an audio record of this proceeding, after which a	
8	Appice Exhibit 3	35	8	transcriptionist will produce a final transcript, if ordered.	
9	Appice Exhibit 4	37	9	In accordance with applicable law, the transcript will be	
10	Appice Exhibit 5	46	10	provided to the witness for review, correction, and signature.	
11			11	Would the parties please state your appearances for	
12			12	the record, beginning with plaintiff's counsel?	
13			13	MR. DIGIULIO: Yes. James DiGiulio from O'Toole	
14			14	Scrivo for the plaintiffs.	
15			15	MR. SHEPARD: Gerald Shepard from the law firm of	
16			16	Pfund McDonnell here for the defendant, Borough of Wallington,	
17			17	Wallington Planning Board, and any individuals, et al. Yeah.	
18			18	THE REPORTER: Will the witness please say and spell	
19			19	your first and last name for the record?	
20			20	THE WITNESS: Jennifer Appice, J-E-N-N-I-F-E-R,	
21			21	A-P-P-I-C-E.	
22			22	THE REPORTER: Thank you. And will the witness kindly	
23			23	present your valid government-issued identification. Perfect.	
24			24	Thank you. Picture is great. Okay. And please raise your	
25			25	right hand.	

<p style="text-align: right;">Page 6</p> <p>1 Do you solemnly swear or affirm that the testimony you</p> <p>2 give in this matter will be the truth, the whole truth, and</p> <p>3 nothing but the truth?</p> <p>4 THE WITNESS: Yes.</p> <p>5 THE REPORTER: Thank you. And do the parties have any</p> <p>6 stipulations they would like to put on the record at this time?</p> <p>7 MR. DIGIULIO: Not at this time.</p> <p>8 MR. SHEPARD: Not at this time.</p> <p>9 THE REPORTER: Perfect. And you may proceed.</p> <p>10 MR. DIGIULIO: Great.</p> <p>11 JENNIFER APPICE</p> <p>12 was called as a witness and, after having been first duly sworn,</p> <p>13 testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. DIGIULIO:</p> <p>16 Q. Good morning, Ms. Appice. How are you?</p> <p>17 A. Good. Thank you.</p> <p>18 Q. We met this morning off the record. My name is Jim</p> <p>19 DiGiulio. I represent the plaintiffs in this lawsuit that's</p> <p>20 pending in the Federal District Court of New Jersey against the</p> <p>21 Borough of Wallington and various other elected officials.</p> <p>22 You're currently the Borough administrator of Wallington?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And when did you start that position?</p> <p>25 A. November of 2023.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Member of 2023. About a year ago?</p> <p>2 A. Yes.</p> <p>3 Q. Congratulations.</p> <p>4 A. Thank you.</p> <p>5 Q. Have you ever been deposed before?</p> <p>6 A. No.</p> <p>7 Q. Okay. Well, then I'll walk you through the process.</p> <p>8 So and if you have any questions, feel free to stop me anytime</p> <p>9 and ask about the process.</p> <p>10 A. Okay.</p> <p>11 Q. So what's going to happen today is, the court reporter</p> <p>12 to your right will be taking down everything we say. This will</p> <p>13 be a question and answer, where I'm attempting to elicit</p> <p>14 information that may be helpful to our case or find out the</p> <p>15 scope of your knowledge and limit the questioning potentially if</p> <p>16 you don't have the scope of knowledge. Understand that?</p> <p>17 A. Yes.</p> <p>18 Q. At the end of the day we will receive a transcript</p> <p>19 that will have everything we said, the questions and the</p> <p>20 answers. You'll have an opportunity to review that with</p> <p>21 counsel, and that can be used in motions or at a trial. So</p> <p>22 you've been sworn under oath here today, so we should treat it</p> <p>23 as if we're in court. It's a live proceeding, and everything</p> <p>24 you say here should be truthful and accurate. Okay?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q. To that point, I don't want you to guess. If you can</p> <p>2 estimate for us: distance, time, dates; if you can estimate and</p> <p>3 you tell us you're estimating, that's great. But don't -- we</p> <p>4 don't need you to speculate today. I just want to understand,</p> <p>5 sitting here today, what you know and don't know based on my</p> <p>6 questions. Okay?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. To make life easier for the court reporter,</p> <p>9 please make sure all of your answers are verbal. Nodding of the</p> <p>10 head, hand gestures aren't going to be taken in the record, so</p> <p>11 please make sure everything is verbal. Okay?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Also, please try to let me finish my question.</p> <p>14 We're going to get to a point where you're probably going to</p> <p>15 have an idea of what my question is going to be sometimes, but</p> <p>16 let me finish it so the record is complete. And I will do my</p> <p>17 very best not to cut you off if -- not to cut you off until you</p> <p>18 finished your answer. Okay?</p> <p>19 A. Yes.</p> <p>20 Q. If I do cut you off and you have more to say, please</p> <p>21 feel free to say you have finished your answer. Okay?</p> <p>22 A. Yes.</p> <p>23 Q. From time to time, your counsel, Mr. Shepard, may</p> <p>24 object to a question. Typically he'll object and then direct</p> <p>25 you to go ahead and answer the question. He's just preserving</p>	<p style="text-align: right;">Page 9</p> <p>1 his objections for future trial or motion practice. And there</p> <p>2 may be times where he might direct you not to answer, but let us</p> <p>3 finish our back and forth, and then he'll give you a direction</p> <p>4 on whether to answer or not. Okay?</p> <p>5 A. Yes.</p> <p>6 Q. Anything I ask you, you know, if you don't ask for</p> <p>7 clarification, we're going to assume and the record will assume</p> <p>8 that you understood my question. Okay?</p> <p>9 A. Yes.</p> <p>10 Q. So if you have any question at all about what I'm</p> <p>11 asking, or a term I'm using, or a person I'm referencing, please</p> <p>12 ask for clarification so we can make sure the record is as clear</p> <p>13 as possible. Okay?</p> <p>14 A. Yes.</p> <p>15 Q. This is not a marathon, so we have coffee, water,</p> <p>16 restrooms. Feel free to ask any time to take a break. I just</p> <p>17 need to finish a question and have an answer before we go. We</p> <p>18 can't leave -- we can't take a break until the question and</p> <p>19 answer is complete. Okay?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And during any breaks, I'll just remind you not</p> <p>22 to speak to counsel about your testimony. Okay?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Any questions for me before we get started?</p> <p>25 A. No.</p>

Jennifer Appice
505
December 03, 2024

10 to 13

<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. And you're here today. We've served a notice</p> <p>2 on you as -- personally on you or -- well, in your capacity as</p> <p>3 business -- business administrator on your personal knowledge</p> <p>4 related to the claims in this case. But also you've been</p> <p>5 designated by the Borough as a corporate designee; do you</p> <p>6 understand that?</p> <p>7 A. Yes.</p> <p>8 Q. And there's certain topics, and I'll show you and we</p> <p>9 can, then, agree on the topics that you were designated for, but</p> <p>10 do you understand that generally?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And do you have a general understanding of what</p> <p>13 it means to be the corporate designee of the Borough?</p> <p>14 A. I'm pretty much the spokesperson for the person who's</p> <p>15 testifying.</p> <p>16 Q. Yeah. So -- yeah. So everything that you say on</p> <p>17 behalf in response as a corporate designee will be binding on</p> <p>18 the Borough as the designee; understood?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. You probably understand that in your role, you</p> <p>21 do that anyway every day, I'm sure. All right. Great. And</p> <p>22 let's do your -- let's go through your background a little bit</p> <p>23 just so we can understand that.</p> <p>24 So what's your highest level of education?</p> <p>25 A. Master's degree.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. And where did you receive that from?</p> <p>2 A. University of Phoenix.</p> <p>3 Q. And what was that in?</p> <p>4 A. Business administration.</p> <p>5 Q. Okay. And when did you get that?</p> <p>6 A. 2004.</p> <p>7 Q. Okay. And prior to that, did you have an</p> <p>8 undergraduate degree?</p> <p>9 A. Yes.</p> <p>10 Q. And where did you receive that from?</p> <p>11 A. William Paterson.</p> <p>12 Q. Okay. And what was that in?</p> <p>13 A. Communications.</p> <p>14 Q. Is that a BA?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Any other post high school degrees or</p> <p>17 certifications of any kind?</p> <p>18 A. No.</p> <p>19 Q. Okay. In your role as business administrator, do you</p> <p>20 need to receive any licensure certifications and continuing</p> <p>21 education of any kind?</p> <p>22 A. No.</p> <p>23 Q. Sorry. That was a long question. Anything of that</p> <p>24 kind that you need?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. What year did you get your BA?</p> <p>2 A. 2000.</p> <p>3 Q. Okay. Did you go right from the William Paterson to</p> <p>4 your studies at University of Phoenix?</p> <p>5 A. No, I took two years off.</p> <p>6 Q. Okay. And was University of Phoenix, did you do that</p> <p>7 periodically, like at night or whenever you could take courses?</p> <p>8 When did you do it?</p> <p>9 A. It was at night.</p> <p>10 Q. Okay. And that was a two-year program?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So what did you do -- were you employed from</p> <p>13 2000 to 2002?</p> <p>14 A. Yes.</p> <p>15 Q. What did you do?</p> <p>16 A. I worked for Sony Music.</p> <p>17 Q. Sony Music?</p> <p>18 A. Yes.</p> <p>19 Q. And what did you do there?</p> <p>20 A. I did their royalties.</p> <p>21 Q. Prior to -- and William Paterson, did you do that in</p> <p>22 four years?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So you started that in '98?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. No. '96.</p> <p>2 A. '96.</p> <p>3 Q. Yeah, '96. Did you have any employment other than</p> <p>4 seasonal or during high school? Did you have any employment</p> <p>5 prior to 1996?</p> <p>6 A. No.</p> <p>7 Q. Okay. And then after you got your master's, what was</p> <p>8 your first employment?</p> <p>9 A. Well, I was working for Sony, so they actually paid</p> <p>10 for my master's.</p> <p>11 Q. Okay. So you worked through Sony. How long did you</p> <p>12 work at Sony for?</p> <p>13 A. Five years, I believe.</p> <p>14 Q. So through about 2005?</p> <p>15 A. Yeah.</p> <p>16 Q. Okay. And then what was your next job after that?</p> <p>17 A. 4Kids Entertainment.</p> <p>18 Q. 4Kids Entertainment. And what was your -- what was</p> <p>19 your role there, generally?</p> <p>20 A. Finance and royalties also.</p> <p>21 Q. And when you say royalties, do you mean you were</p> <p>22 the -- you were -- were you responsible for paying royalties or</p> <p>23 calculating royalties?</p> <p>24 A. Calculating royalties.</p> <p>25 Q. Calculating. Okay. And how long were you at 4Kids</p>

<p style="text-align: right;">Page 14</p> <p>1 Entertainment for?</p> <p>2 A. Two years.</p> <p>3 Q. Two years. Until about '07?</p> <p>4 A. About that.</p> <p>5 Q. '07, '08, somewhere in that range?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay.</p> <p>8 A. Going back a long time.</p> <p>9 Q. I know. I know. It's the most fun part of the</p> <p>10 deposition. This where I do test your memory. And then after</p> <p>11 4Kids Entertainment in the 2000 -- 2007, 2008 timeframe, what</p> <p>12 did you do next for employment?</p> <p>13 A. Worked for a brief period for Everyday Health.</p> <p>14 Q. Okay. And what was their general --</p> <p>15 A. Same thing, royalties and finance.</p> <p>16 Q. You said a brief time?</p> <p>17 A. We relocated down to Washington DC. So I ended up</p> <p>18 choosing not to relocate. So it was about six to eight months</p> <p>19 that I worked there, and then I relocated with the company.</p> <p>20 Q. Okay. So what did you do after that?</p> <p>21 A. I did a career change, and I started working in</p> <p>22 telecom communication.</p> <p>23 Q. Okay. Is that like the 2009 timeframe?</p> <p>24 A. About that.</p> <p>25 Q. Okay. And what was your first telecom job?</p>	<p style="text-align: right;">Page 15</p> <p>1 A. Clearwater Communication.</p> <p>2 Q. Okay.</p> <p>3 A. Which was also part of Sprint.</p> <p>4 Q. And what was your role at Clearwater?</p> <p>5 A. I did project management.</p> <p>6 Q. Okay. What kind of projects, just generally?</p> <p>7 A. Building the cell phone towers.</p> <p>8 Q. Cell phone towers. And how long were you at</p> <p>9 Clearwater?</p> <p>10 A. Less than a year, so I -- give or take eight, nine</p> <p>11 months.</p> <p>12 Q. And then what did you do?</p> <p>13 A. I went to work for Skyfield Partners, which was a</p> <p>14 contractor for Clearwater.</p> <p>15 Q. Got it. And how long were you there?</p> <p>16 A. Four years.</p> <p>17 Q. So we're getting within a decade. We're getting close</p> <p>18 now. That was around 2014?</p> <p>19 A. About that.</p> <p>20 Q. Okay. And then after Skyfield, what did you do?</p> <p>21 A. I left Skyfield and I went to LEC, which is the same</p> <p>22 thing, telecom, for two years.</p> <p>23 Q. Okay. And then what?</p> <p>24 A. I -- they merged with TEG, so I did the same thing. I</p> <p>25 was a senior project manager for two years.</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. All right.</p> <p>2 A. And then I left there and went to EJD Wireless, where</p> <p>3 I became the vice president of the company.</p> <p>4 Q. Okay.</p> <p>5 A. Until I left there and came to the Borough Wallington.</p> <p>6 Q. In November of 2023?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. That is a curious route to the Borough of</p> <p>9 Wallington. Can I just ask how that came about?</p> <p>10 A. I'm also the deputy mayor of Roselle Park, so I have</p> <p>11 experience doing that. I've been doing that for three years.</p> <p>12 Q. That's where we're headed next. I was going to ask</p> <p>13 you if you have any other municipal experience. So you're --</p> <p>14 are you currently deputy mayor of Roselle Park?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And when did you take that position on?</p> <p>17 A. It's yearly. So last year I was the mayor, and</p> <p>18 then -- for four months, then I came off that. I reran one and</p> <p>19 became deputy mayor. So it will be a year -- this year will be</p> <p>20 deputy. Last year, was mayor. The year prior was deputy.</p> <p>21 Q. How many -- how long have you served, generally,</p> <p>22 either as -- is that part of the council, or is that separate?</p> <p>23 What's the form of government for Roselle Park?</p> <p>24 A. It's -- the -- the government picks. They vote</p> <p>25 themselves. The population doesn't pick, residents don't pick.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Council votes?</p> <p>2 A. Council votes.</p> <p>3 Q. Okay. So how long have -- so how -- what was your</p> <p>4 first elected position at Roselle Park?</p> <p>5 A. Three years ago. So when I was voted in, I became</p> <p>6 automatically deputy -- deputy mayor.</p> <p>7 Q. Okay. And Roselle Park is your municipality of</p> <p>8 residence?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you hold any other positions in the Borough</p> <p>11 of Roselle Park?</p> <p>12 A. I was the recreation director.</p> <p>13 Q. For how long?</p> <p>14 A. Paid two years, unpaid four years.</p> <p>15 Q. And when did that start?</p> <p>16 A. So we're going on -- we're going on seven years now</p> <p>17 I've been there.</p> <p>18 Q. You're still -- hold on.</p> <p>19 A. I'm the liaison.</p> <p>20 Q. Okay. Now you're the liaison?</p> <p>21 A. Now I'm the liaison.</p> <p>22 Q. Okay. So you held that up to your -- did you -- did</p> <p>23 that overlap with your time at the council at all or no?</p> <p>24 A. No, that's what -- actually somebody resigned from the</p> <p>25 council and because I was doing that, they asked me to, and with</p>

<p style="text-align: right;">Page 18</p> <p>1 my finance background and I write contracts and read contracts, 2 they asked me to step into the council. 3 Q. Helpful for council -- 4 A. Yes. 5 Q. -- to have somebody like that, I'm sure. 6 Any other positions in Roselle Park? 7 A. No. 8 Q. Any other public positions at all? 9 A. No. 10 Q. Okay. And so the Borough of Wallington BA position is 11 the first out of -- first public position you've had outside of 12 your residence -- 13 A. Yes. 14 Q. -- or municipality? Okay. 15 And can you briefly describe just what does the 16 business administrator do in Wallington, generally? What are -- 17 your role? 18 A. Manage all the employees, handle all the day-to-day 19 operations, work with the attorneys on contract negotiations. 20 Just pretty much see over -- oversee the day-to-day operations 21 of the Borough and any issues. 22 Q. And is that a full-time job? 23 A. Yes. 24 Q. Okay. And your predecessor, what was his name? 25 A. Michael Kazimir.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. Do you know how long Michael was in that 2 position? 3 A. I want to say about a year and a half, I believe. Two 4 or three. 5 Q. And he ultimately went to what borough? 6 A. He went to Dumont. 7 Q. Dumont. And any chance you remember the predecessor 8 before Michael? 9 A. Hector Olmo. 10 THE REPORTER: Can you repeat that last name? 11 THE WITNESS: Olmo, O-L-M-O. 12 THE REPORTER: Thank you. 13 BY MR. DIGIULIO: 14 Q. Do you know how long Hector was in that job? 15 A. I don't. That I don't recall. 16 Q. Prior to taking that job in November 2023, did you 17 have -- did you know any of the members of the council? 18 A. No. 19 Q. Okay. Did you know Michael? 20 A. Yes. Michael is actually from Roselle Park. 21 Q. Yeah, that's what I thought so. Following a similar 22 line? 23 A. He actually moved. 24 Q. Okay. The current council, a few members' terms are 25 up at the end of the year, right?</p>
<p style="text-align: right;">Page 20</p> <p>1 A. Right. 2 Q. Which one is that? 3 A. Two. One was reelected, Khaldoun Androwis, and 4 Eugeniusz Rachelski. 5 MR. DIGIULIO: You need those? Khaldoun Androwis, 6 K-H-A-L-D-O-U-N, Androwis, A-N-D-R-O-W-I-S. And Mr. Rachelski, 7 he was deposed before in this case, E-U-G-E-N-I-U-S-Z, 8 Rachelski, Rachel, S-K-I. 9 BY MR. DIGIULIO: 10 Q. You said one of them was reelected, Which one? 11 A. Gene (phonetic). 12 Q. Gene. Okay. And Androwis is out as of December? 13 A. Yes. 14 Q. Okay. And who's coming in; do you know the new 15 council member? 16 A. Justyna Marciniak. 17 Q. Any other changes you know about in the council? 18 A. Not that I'm aware of. 19 Q. And Mayor Dabal's term continues through 2027; is that 20 right? 21 A. I believe so. 22 Q. Okay. I'll show you -- we'll go with -- we'll go with 23 the last name. Appice 1. Let me put these down. 24 THE REPORTER: I can keep track of them online. 25 MR. DIGIULIO: Oh, yeah. Thank you.</p>	<p style="text-align: right;">Page 21</p> <p>1 BY MR. DIGIULIO: I just show -- I'll put on the record what it 2 is. Ms. Appice, I've just shown you what we've marked as 3 Appice 1. It's a September 24, 2024, notice to take the 4 deposition of the Borough of Wallington's 30(b) (6) witness. Do 5 you see that on the cover? 6 (Appice Exhibit No. 1 marked for identification.) 7 THE WITNESS: Yes. 8 BY MR. DIGIULIO: 9 Q. Okay. Have you seen this document before? 10 A. Yes. 11 Q. And we talked about it briefly before. You understand 12 that you've been designated by the Borough for at least some of 13 these topics that are on page -- there's 10 topics that go from 14 page 2 to 3. Do you see those? 15 A. Yes. 16 Q. Okay. And you've been designated for some of these? 17 A. Yes. 18 Q. Okay. And my understanding, and correct me if I'm 19 wrong, is you've been designated by the Borough as a 30(b) (6) 20 witness for number 1? 21 A. Yes. 22 Q. And that's all claims and defenses set forth in any 23 pleading filed in the above referenced action, right? 24 A. Yes. 25 Q. Okay. Number 5, and that's all communications to or</p>

<p style="text-align: right;">Page 22</p> <p>1 from any employee of the Borough acting in their official</p> <p>2 capacity regarding the planning or development of pedestrian</p> <p>3 access from the Borough to Wesmont Train Station?</p> <p>4 A. Yes.</p> <p>5 Q. Number 6, which is, any and all complaints of</p> <p>6 discrimination made against the Borough, including any of its</p> <p>7 representatives, affiliates, agents and employees between</p> <p>8 January 1, 2006, to present, right?</p> <p>9 A. Yes.</p> <p>10 Q. And then you did sign the interrogatories, right, the</p> <p>11 written discovery responses?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And that number 10 is, all topics identified in</p> <p>14 the plaintiff's interrogatories and requests for documents</p> <p>15 propounded on the Borough in this action.</p> <p>16 Is it fair to say that you -- any topics that covered</p> <p>17 by topics 1, 5, and 6 that were in the interrogatories, you're</p> <p>18 also a corporate designee?</p> <p>19 A. Yes.</p> <p>20 Q. Does that make sense? So -- I mean, I can ask Gerry,</p> <p>21 actually.</p> <p>22 MR. DIGIULIO: Is that understood?</p> <p>23 MR. SHEPARD: Yeah. I mean, it's --</p> <p>24 MR. DIGIULIO: We can go off the record.</p> <p>25 (Off the record at 10:37 a.m.)</p>	<p style="text-align: right;">Page 23</p> <p>1 (On the record at 10:38 a.m.)</p> <p>2 BY MR. DIGIULIO:</p> <p>3 Q. Okay. So it looks like we've agreed on 1, 5 and 6 are</p> <p>4 the topics, and number 10, you signed the interrogatory, so I</p> <p>5 will obviously ask you about those, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And just to -- let's just -- maybe we can race</p> <p>8 through these other topics quickly. So you're here in your</p> <p>9 personal capacity with your personal knowledge and also your</p> <p>10 knowledge as a designee, which requires a little more work to</p> <p>11 get up to speed. But maybe we can foreclose some of your</p> <p>12 personal knowledge issues on the non-topic.</p> <p>13 So with regard to 2 and 3, that relates to the</p> <p>14 planning or development of taxes and the taxes assessed on the</p> <p>15 plaintiff's properties, the Morningside property and the New</p> <p>16 Wallington property; do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any personal knowledge regarding either</p> <p>19 the planning applications or the taxes assessed for those</p> <p>20 properties?</p> <p>21 A. No.</p> <p>22 Q. All right. And you never -- have you ever reviewed</p> <p>23 any of the planning applications of either of them?</p> <p>24 A. No.</p> <p>25 Q. Okay. Number 4 is, any meetings, public or private,</p>
<p style="text-align: right;">Page 24</p> <p>1 attended by borough officials concerning population</p> <p>2 demographics, any contemplated ordinances, resolutions or</p> <p>3 construction -- or construction of affordable and/or low --</p> <p>4 local -- low income housing.</p> <p>5 Do you have any personal knowledge related to any such</p> <p>6 meetings?</p> <p>7 A. Not that I'm aware of, no.</p> <p>8 Q. Okay. Number 7 and 8 deal with the issuance of</p> <p>9 property taxes and tax sales certificates for the plaintiff's</p> <p>10 properties, any personal knowledge of those?</p> <p>11 A. No.</p> <p>12 Q. Okay. And number 9 is somewhat similar to number 4,</p> <p>13 it's inquiries, applications for planning or development of any</p> <p>14 affordable or low housing -- low income housing within the</p> <p>15 Borough between 2006 and present. Do you have any personal</p> <p>16 knowledge of that issue?</p> <p>17 A. No.</p> <p>18 Q. Okay. So fair to say -- and let's just -- and let's</p> <p>19 just close the loop on your personal knowledge.</p> <p>20 Have you seen the complaint in this case before?</p> <p>21 A. No.</p> <p>22 Q. Let me show it to you. Just see if you -- refresh</p> <p>23 your recollection. This is Appice 2. This is the complaint.</p> <p>24 Well, yeah. Actually, I'll ask you a more broad question</p> <p>25 first. Prior to you becoming Borough of Wallington borough</p>	<p style="text-align: right;">Page 25</p> <p>1 administrator, had you ever heard of either Jim Nuckel or Donald</p> <p>2 Nuckel?</p> <p>3 (Appice Exhibit No. 2 marked for identification.)</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. DIGIULIO:</p> <p>6 Q. Have you ever -- have you ever owned any property in</p> <p>7 Wallington?</p> <p>8 A. No.</p> <p>9 Q. Okay. So in front of you is what we've marked as</p> <p>10 Appice 2. It's the complaint filed by plaintiffs in this case</p> <p>11 in the Federal District Court of New Jersey, and it's dated</p> <p>12 December 7, 2020.</p> <p>13 Looking at it now, do you -- does it refresh your</p> <p>14 recollection at all if you've ever seen this?</p> <p>15 A. No.</p> <p>16 Q. Okay. Do you have a general understanding of the</p> <p>17 claims being brought by plaintiffs in this case?</p> <p>18 A. I'm aware of something about discrimination.</p> <p>19 Q. Okay. Anything more than that?</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you have -- so prior to today, in</p> <p>22 preparation as the corporate designee, did you review any</p> <p>23 documents at all?</p> <p>24 A. The resolution. The initial resolution for the</p> <p>25 property.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. The initial resolution for the property. Is that a</p> <p>2 resolution related to the plaintiff's property for -- do you</p> <p>3 have -- do you have a stack of cases right in front of you?</p> <p>4 A. I can't find (indiscernible).</p> <p>5 Q. Yeah. So you're showing me what is -- so you reviewed</p> <p>6 this document, Resolution 18326, from the Borough of Wallington,</p> <p>7 dated January 16, 2018?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And you -- I think you referenced it as the</p> <p>10 original?</p> <p>11 A. I'm not sure. That's the only one I have looked at.</p> <p>12 Q. Okay. So this is the only resolution you've seen</p> <p>13 related to this property?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did you look at any other documents in</p> <p>16 preparation for today?</p> <p>17 A. No.</p> <p>18 Q. Did you review the Borough's answer to the complaint</p> <p>19 that I just showed you?</p> <p>20 A. No.</p> <p>21 Q. Did you meet with anyone other than Mr. Shepard in</p> <p>22 preparation for today?</p> <p>23 A. No, I did not.</p> <p>24 Q. Okay. Have you spoken about this lawsuit with anyone</p> <p>25 else in the borough?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. No.</p> <p>2 Q. Okay. Have you spoken to any -- have you ever spoken</p> <p>3 to any council members at all about this lawsuit?</p> <p>4 A. No.</p> <p>5 Q. Okay. Have you spoken to any employees of the borough</p> <p>6 related to this lawsuit, regarding this lawsuit?</p> <p>7 A. No.</p> <p>8 Q. Okay. Were you ever in any -- don't tell me what was</p> <p>9 said, but were you ever in attendance in any executive sessions</p> <p>10 for the council where this lawsuit was discussed?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you ever attend executive session for</p> <p>13 council meetings?</p> <p>14 A. Yes.</p> <p>15 Q. You do. And do you sometimes report on pending</p> <p>16 litigations to the counsel?</p> <p>17 A. I do not. The attorney -- the Borough attorney would</p> <p>18 discuss that.</p> <p>19 Q. Okay. And the current borough attorney is Dick Allen</p> <p>20 (phonetic)?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Have you been involved at all in the property</p> <p>23 tax appeals related to the plaintiff's properties?</p> <p>24 A. I have not.</p> <p>25 Q. Okay. Do you know what -- when I say the plaintiff's</p>
<p style="text-align: right;">Page 28</p> <p>1 properties, let's make sure we're clear on that. Do you know</p> <p>2 which two parcels I'm discussing?</p> <p>3 A. I read the New Wallington home because I saw it on the</p> <p>4 paper, but I don't know --</p> <p>5 Q. Do you know where the properties are located?</p> <p>6 A. On Main Avenue.</p> <p>7 Q. Yep. And, so, if I say the Morningside and New</p> <p>8 Wallington properties, do you generally know where they are?</p> <p>9 A. Other side of -- I don't know where the Morningside</p> <p>10 is.</p> <p>11 Q. Yes. They're side by -- they're adjacent properties</p> <p>12 and the former ice rink is on it.</p> <p>13 A. Okay. Yes.</p> <p>14 Q. Do you know what I'm talking about now?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So if I say the plaintiff's properties, I'll be</p> <p>17 referring to those two properties, okay?</p> <p>18 A. Yep.</p> <p>19 Q. Do you have any idea what the current approvals are</p> <p>20 for those properties?</p> <p>21 A. I know that the Planning Board did -- that there was</p> <p>22 approvals from the Planning Board for both.</p> <p>23 Q. Okay. Do you have -- you don't have any idea how many</p> <p>24 units there are?</p> <p>25 A. I am not aware.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. Any idea of how many affordable units?</p> <p>2 A. I'm not aware.</p> <p>3 Q. Okay. Now, have you ever heard of the Fair Housing</p> <p>4 Act?</p> <p>5 A. Yes.</p> <p>6 Q. You have?</p> <p>7 A. Yes.</p> <p>8 Q. And what's your understanding of the Fair Housing Act?</p> <p>9 A. It's to be able to build -- similar to the affordable</p> <p>10 housing, that they're allowed to build homes or apartments</p> <p>11 within the boroughs without discriminating.</p> <p>12 Q. Okay. And did you -- have you reviewed any of the</p> <p>13 history -- I think you said you only saw that one resolution</p> <p>14 from 2018. Do you have any understanding of the history of the</p> <p>15 attempts by the plaintiffs to obtain approvals for development</p> <p>16 on this property?</p> <p>17 A. No, I'm not aware.</p> <p>18 Q. Okay. Have you seen any of the court decisions that</p> <p>19 were rendered related to development of these properties?</p> <p>20 A. No.</p> <p>21 Q. You never reviewed any of those?</p> <p>22 A. No.</p> <p>23 Q. Okay. Do you have any understanding -- I think you</p> <p>24 said maybe discrimination, but do you have any understanding of</p> <p>25 the basis, any more detail about plaintiff's Fair Housing Act</p>

<p style="text-align: right;">Page 30</p> <p>1 claim?</p> <p>2 A. No.</p> <p>3 Q. Okay. And do you generally know, understand what</p> <p>4 the -- what the Borough's defense is to those claims?</p> <p>5 A. That there wasn't any discrimination.</p> <p>6 Q. Okay. And -- but you don't have an understanding of</p> <p>7 the basis for the discriminatory claim?</p> <p>8 MR. SHEPARD: Just note my objection. I mean,</p> <p>9 defenses are legal in nature. And if you can answer --</p> <p>10 MR. DIGIULIO: Yeah, the Borough was put on the</p> <p>11 defense, factual defense. So I'm trying to figure out what it</p> <p>12 is.</p> <p>13 BY MR. DIGIULIO:</p> <p>14 Q. So do you have any understanding other than that</p> <p>15 there's discrimination alleged as to what the basis of the</p> <p>16 discrimination is?</p> <p>17 A. No.</p> <p>18 Q. You do not. Okay. And I just want to make sure we're</p> <p>19 absolutely clear.</p> <p>20 You've never read this complaint?</p> <p>21 A. Correct. No.</p> <p>22 Q. So do you -- so you don't have an understanding that</p> <p>23 dating back to 2006, plaintiff sought relief from the courts to</p> <p>24 permit it to develop affordable housing in the Borough, you've</p> <p>25 never seen anything related to that?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. No.</p> <p>2 Q. Okay. So let's go -- can you go back to Appice 1? I</p> <p>3 can take that complaint from you for a second. I can take that</p> <p>4 one also. I want to keep my order so you don't get -- can we go</p> <p>5 back to the dep notice that I showed you.</p> <p>6 So you've been designated for number 1, for all claims</p> <p>7 and defenses set forth in any pleadings filed in this matter; do</p> <p>8 you see that for number 1?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. But you haven't read the complaint and you</p> <p>11 haven't read the answer?</p> <p>12 A. I read what the Borough attorney gave me and what he</p> <p>13 reviewed with me.</p> <p>14 Q. Okay. But you said the only document you reviewed was</p> <p>15 the resolution?</p> <p>16 A. That's the only thing he went over and he told me --</p> <p>17 Q. I don't want you to disclose any communications with</p> <p>18 counsel, I just want to know what documents you reviewed. Okay.</p> <p>19 But -- so anything else, any other understanding you may have</p> <p>20 about this case was provided by counsel?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. But -- and I don't think I got an answer to my</p> <p>23 question, you didn't -- you're designated as the corporate</p> <p>24 designee for all claims and defenses in this case but you</p> <p>25 haven't read the complaint or the answer, right?</p>
<p style="text-align: right;">Page 32</p> <p>1 A. I don't recall seeing that.</p> <p>2 Q. Okay.</p> <p>3 MR. DIGIULIO: Gerry?</p> <p>4 MR. SHEPARD: Yeah.</p> <p>5 MR. DIGIULIO: Can we go off the record?</p> <p>6 (Off the record at 10:49 a.m.)</p> <p>7 (On the record at 10:52 a.m.)</p> <p>8 BY MR. DIGIULIO:</p> <p>9 Q. Okay. So number 5, what we went through, is one of</p> <p>10 the topics, all communications to or from any employee of the</p> <p>11 Borough acting in their official capacity regarding the planning</p> <p>12 or development of pedestrian access from the Borough to Wesmont</p> <p>13 Train Station; do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So do you know where the Wesmont Train Station</p> <p>16 is located on the other side of the train tracks from the</p> <p>17 Borough of Wallington?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And what town is that?</p> <p>20 A. East Rutherford.</p> <p>21 Q. That's East Rutherford on that side. Okay.</p> <p>22 And do you have an understanding there -- there's a</p> <p>23 large property that sort of abuts the train tracks that's owned</p> <p>24 by -- now owned by Devli?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Okay. And do you have an understanding that there</p> <p>2 is -- that the Borough has a right to a right of way along the</p> <p>3 border of that property from Main Street down towards the train</p> <p>4 tracks? Do you have an understanding of that right of way?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay. What's your general understanding of anything</p> <p>7 about that?</p> <p>8 A. I just know that that's our property; that we own</p> <p>9 that. That we can build if we wanted to.</p> <p>10 Q. Can build a road?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. There's no road there now, right?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. So it's like a paper roadway, is what I call</p> <p>15 it; does that make sense to you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And do you understand that paper roadway runs</p> <p>18 into another property that abuts the railroad owned by Donald</p> <p>19 Nuckel?</p> <p>20 A. Okay.</p> <p>21 Q. Do you know that property that I'm talking about?</p> <p>22 A. That's the Jasontown property?</p> <p>23 Q. No. No. Let me see if I have -- I'll show you the</p> <p>24 map in a minute.</p> <p>25 A. Okay.</p>

Jennifer Appice
511
December 03, 2024

34 to 37

<p style="text-align: right;">Page 34</p> <p>1 Q. No worries. So are you aware of any -- so let's just 2 get -- and maybe this will be quick. On number 5, are you 3 aware -- have you seen any communications among and between 4 employees of the Borough related to developing that roadway and 5 potentially a walkway to the Wesmont Train Station? 6 A. No. 7 Q. Okay. And that train, have you -- have you been to 8 that portion of the train tracks? 9 A. No. 10 Q. Okay. Are you aware of any efforts by the Borough to 11 develop a walkway to the Wesmont Train Station for Wallington 12 residents to access the train? 13 A. Not that I'm aware of. 14 Q. Okay. And then 6 is, any and all complaints of 15 discrimination against the Borough. Are you aware of any, other 16 than this lawsuit which we discussed, alleges discrimination, 17 are you -- have you seen any complaints against the Borough 18 related to alleging discrimination? 19 A. No. 20 Q. Okay. Have you heard of any complaints? 21 A. Not that I'm aware of. 22 Q. Okay. So fair to say for 5 and 6, you're not aware of 23 any communications related to the Wesmont Train Station or 24 complaints of discrimination that you could testify to here 25 today?</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Correct. 2 Q. Okay. I want to show you -- let me give you that so I 3 can keep it somewhat in order to. Try my best here. All right. 4 I'm going to show you what we're going to mark as Appice 5 -- 5 oh, Appice 3. And you got this, I think, already. This is a 6 court decision rendered by Judge Harris in a lawsuit, with 7 document number Bergen Law Division 37306, and it is dated March 8 18, 2008. 9 (Appice Exhibit No. 3 marked for identification.) 10 THE REPORTER: You said 2008? 11 BY MR. DIGIULIO: 12 Q. Yes, 2008. So I think you already testified you 13 weren't aware that plaintiff's applications to develop its 14 property date back to 2006; is that right? 15 A. Correct. 16 Q. Okay. And, so, I guess it's fair to say you probably 17 have never seen this 2008 decision? 18 A. No. 19 Q. Okay. So were you ever aware -- if you turn to page 20 15 at the bottom, I just want to make sure, Judge Harris found, 21 The order shall further declare that Wallington land use 22 regulations remain invalid and unconstitutional insofar as they 23 continue past exclusionary practices. 24 Have you ever heard that Wallington -- that a court 25 found that Wallington's land use regulations were invalid and</p>
<p style="text-align: right;">Page 36</p> <p>1 unconstitutional? 2 A. Not that I recall. 3 Q. Okay. No one has ever explained that to you before? 4 A. No. 5 Q. Okay. Have you ever in your -- in your years in 6 public service, have you ever seen a court render land use 7 regulations invalid and unconstitutional because they continued 8 past exclusionary practices? 9 A. Not that I recall. 10 Q. Okay. Do you have any -- have you ever heard anyone 11 say -- anyone describe any of the exclusionary practices that 12 Wallington was engaging in back then? No? Nothing? No 13 knowledge as to this? 14 A. No. 15 Q. Okay. There you go. I can take that from you. 16 And then, rather than show it to you, I'll just -- in 17 2015 and again in 2019, Bergen County courts found denial of 18 plaintiff's various land use applications to be arbitrary, 19 capricious, and unreasonable. Did you ever see either of those 20 decisions? 21 A. No. 22 Q. Okay. Do you have any knowledge that three different 23 court decisions deemed Wallington's denial of plaintiff's land 24 use applications arbitrary, capricious and unreasonable? 25 A. No.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Have you heard that term before, arbitrary, capricious 2 and unreasonable? 3 A. No. 4 Q. You have not. Okay. 5 And you did not attend any Planning Board meetings 6 where plaintiff's applications were being reviewed, right? 7 A. No. 8 Q. Okay. And you never saw those transcripts? 9 A. No. 10 Q. Okay. Have you had any involvement in the Borough of 11 Wallington's efforts to settle claims by fair share housing? 12 A. No. 13 Q. Was that all done before you? 14 A. It was before. That was before me. 15 Q. Have you heard of fair share housing before? 16 A. Brief -- I mean, briefly. 17 Q. I'm going to show you what we're going to mark as 18 Appice 4. These are the Borough's responses to interrogatories, 19 dated September 12, 2024. Have you seen these before? 20 (Appice Exhibit No. 4 marked for identification.) 21 THE WITNESS: Yes. 22 BY MR. DIGIULIO: 23 Q. Okay. Can you turn to the last page; is that your 24 signature? 25 A. Yes.</p>

Jennifer Appice
512
December 03, 2024

38 to 41

<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. And do you recall signing this on or about 2 September 12, 2024? 3 A. Yes. 4 Q. Okay. Now, these answers -- in the certification on 5 the last page it says the answers are not based on your personal 6 knowledge, but, instead, upon investigation and other sources I 7 believe to be reliable; do you see that? 8 A. Yes. 9 Q. Okay. Do you recall what investigation, if any, you 10 did to ensure these answers were accurate? 11 A. This was a discussion with the Borough's -- borough 12 attorney. 13 Q. Okay. Did you do any independent investigation other 14 than speaking with counsel? 15 A. No. 16 Q. Okay. Did you review any documents before you signed 17 this document? 18 A. No. 19 Q. Okay. I want to go through. Can you turn to page -- 20 the first -- the second page, I'm sorry, and it has numbers 1, 21 2, and 3 on it? Okay. We're on the same page? 22 A. Yes. 23 Q. Very good. In number 3 the question asks if the 24 Borough contends there are any admissions or declarations 25 against interest made by any party in this action, and then it</p>	<p style="text-align: right;">Page 39</p> <p>1 goes on with six subparts; do you see that? 2 A. Uh-huh. 3 Q. Okay. The answer was, Plaintiff New Wallington Home 4 admitted in the amended complaint that it withheld property tax 5 payments from 2016 to 2018. And then, The defendant, the 6 Borough, reserves the right to amend the responses; do you see 7 that? 8 A. Yes. 9 Q. Okay. You didn't actually read the complaint, though, 10 right? 11 A. Correct. 12 Q. Okay. That was -- that was -- I guess that was -- was 13 that drafted by counsel? 14 A. Yes. 15 Q. Okay. Do you have any personal knowledge related to 16 New Wallington's withholding of property taxes? 17 A. No. 18 Q. Have you ever seen their letter paying under protest? 19 A. No. 20 Q. Have you ever seen their claims related to not 21 receiving proper notice related to those property tax bills? 22 A. No. 23 Q. Okay. Is there someone better suited for those 24 questions in the Borough? 25 A. I would think it would be our tax assessor, Ed Brown.</p>
<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. That's the current tax assessor? 2 A. Yes. I mean, I don't know if he was here during the 3 time, but he would probably be the most suited to answer those. 4 Q. Sure. And do you know when Ed started as the tax 5 assessor? 6 A. I believe it was around 2018, 2019. 7 Q. Okay. If you could turn to number 10, it asks the 8 Borough to identify any complaints of discrimination made 9 against it between January 2006 to the present, and then there's 10 five subparts; do you see that? 11 A. Yes. 12 Q. Okay. And then in the answer it says, With respect to 13 any issues relating to affordable housing, the Borough is aware 14 of only the allegations made by the plaintiffs in this case and 15 those made by the Morningside at Wallington, Donald Nuckel and 16 Wallington Homes in the declaratory judgment action with the 17 docket number BER-L6285-15; do you see that? 18 A. Yes. 19 Q. Okay. I asked you before about this, you didn't 20 mention that case. Do you know anything about that case? 21 A. No. No, not that I recall. 22 Q. Okay. Do you remember any of the alleged 23 discrimination by those plaintiffs in that -- in that other case 24 by Morningside at Wallington? 25 A. I don't recall.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Okay. Do you remember seeing any -- reviewing any 2 documents related to that lawsuit? 3 A. No, not that I recall. 4 Q. Okay. Numbers 12 and 13 deal with the property tax 5 notices, and I think you said you have no personal knowledge 6 related to that at all, right? 7 A. No. 8 Q. Okay. Okay. If you go to number 21, I think it's 9 on -- well, the pages aren't numbered. Apologies. You there? 10 A. Yes. 11 Q. Okay. That asked you to, or the Borough, to set forth 12 some information, including the population of the Borough as of 13 December 31, 2023, and the percentage of borough population that 14 was, quote, white alone, not Hispanic or Latino, close quote, as 15 of December 31, 2023; do you see that? 16 A. Yes. 17 Q. The answer says that according to the U.S. census, 18 Borough Wallington had at that time 11,868 residents; do you see 19 that? 20 A. Yes. 21 Q. And the number of white residents was 8,286; do you 22 see that? 23 A. Yes. 24 Q. Okay. Does that 11,000 number sound about right 25 today?</p>

Jennifer Appice
513
December 03, 2024

42 to 45

Page 42

1 A. It might be a little higher, but about that.

2 Q. And how about that -- so that percentage, just, I did

3 the math, is 69.8 percent white as of 12/31/2023. Do you have

4 any idea if that number has changed at all since -- for 2024?

5 A. I don't recall, no.

6 Q. Okay. Do you know if any of the affordable housing

7 units that have been approved in the Borough have been built?

8 A. I don't recall.

9 Q. Okay. Do you know if any of -- oh, well, you don't

10 know if they were built so I guess you don't know if anybody

11 lives in them?

12 A. That was prior to me.

13 Q. Okay. Got it. How long have you -- how long have you

14 lived in Roselle Park for?

15 A. Nine years.

16 Q. Okay. Are you originally from the Bergen County area?

17 A. Yes.

18 Q. Okay. What -- just, what other towns, generally, did

19 you live in?

20 A. Paramus.

21 Q. Okay. Do you have an understanding of the populations

22 of the towns that surround Wallington?

23 A. As in population size?

24 Q. Yeah.

25 A. Yes.

Page 44

1 A. No, I don't recall.

2 Q. Okay. Do you recall being involved at all in the

3 gathering of emails or letters or anything to produce in this

4 case?

5 A. Not that I'm aware of.

6 Q. Okay. Do you know if the Borough conducted an

7 electronic review of emails to find documents relevant to this

8 case?

9 A. I believe the Borough attorney.

10 Q. They would -- the Borough attorney would handle that?

11 A. Would handle that.

12 Q. Okay. Were you involved at all in the -- have you

13 ever seen the partially executed settlement agreement in this

14 case?

15 A. I don't recall seeing that.

16 Q. Okay. Do you have any personal knowledge at all about

17 the terms that are in that draft settlement agreement?

18 A. No, I don't recall.

19 Q. Okay. Do you have any knowledge of any of the terms

20 that were documented in that partially executed settlement

21 agreement?

22 A. No.

23 Q. Okay. Did you ever talk to any council members or

24 employees about the potential settlement agreement in this case?

25 A. No.

Page 43

1 Q. Okay. And what towns, generally, would you consider

2 to be neighbors of Wallington?

3 A. Carlstadt, East Rutherford, Rutherford, Passaic.

4 Q. Do you have any idea if those are more or less white

5 in population?

6 A. I don't. I do not.

7 Q. You don't know.

8 Probably fair to say Passaic is less white?

9 A. I would say, yes.

10 Q. Okay. East Rutherford likely?

11 A. I don't know.

12 Q. Carlstadt?

13 A. I don't know.

14 Q. Okay. Oh, is the new council member that's coming on

15 in January?

16 A. Justyna Marciniak.

17 Q. Justyna. Okay. And is Ms. Marciniak a white woman?

18 A. Polish. Yes.

19 Q. Polish. Polish. Okay. Are you aware the Borough

20 produced some documents in this case at all? I can take that

21 from you. Are you aware if the Borough produced any documents

22 in this case?

23 A. I'm not aware.

24 Q. Okay. Did you -- did you review -- so you didn't see

25 any, like, document production that was made by the Borough?

Page 45

1 MR. SHEPARD: Note my objection. Just don't mention

2 anything said in executive session by the Borough attorneys.

3 MR. DIGIULIO: Yeah. Yeah. That is fair.

4 BY MR. DIGIULIO:

5 Q. But I think you testified you were not -- you've never

6 been in any executive session related to this lawsuit at all,

7 right?

8 A. I don't recall that.

9 Q. You don't recall. Okay. Do you know if the Borough

10 of Wallington has ever entered into a PILOT in lieu of -- well,

11 let me ask you this, do you know what a PILOT is?

12 A. Yes.

13 Q. What is your general understanding of a PILOT?

14 A. Payment in lieu of taxes.

15 Q. And what does that generally mean?

16 A. So they don't pay the tax, that they give an agreed

17 amount of money, I believe. It's negotiated.

18 Q. Okay. So it's a negotiated payment in lieu of paying

19 the typical property tax?

20 A. Correct.

21 Q. Okay. And do you know if the Borough of Wallington

22 has ever approved a PILOT before?

23 A. Not that I recall.

24 Q. Okay. None during your time?

25 A. Not during my time.

Jennifer Appice
514
December 03, 2024

46 to 49

Page 46

1 Q. Okay. So plaintiff's position -- and I know you
2 haven't read the complaint, so I'm just going to make a
3 representation. Plaintiff's position in this case is that the
4 Borough improperly denied numerous land use applications
5 delaying the development of the property for many years, and
6 three courts found that those decisions were arbitrary,
7 capricious and unreasonable, and I'm trying to determine if the
8 Borough has any other bases for their denials that are not set
9 forth in resolutions.

10 And, so, as here as the corporate designee, are you
11 aware of any other bases for the denial of those applications?

12 A. Not that I'm aware of.

13 Q. Okay. That's the one. So the one document you recall
14 reviewing relating to this lawsuit is this resolution; is that
15 right?

16 A. Yes.

17 Q. Okay. And that's -- we're going to mark that as
18 Appice 5. And that is a January 16, 2018, resolution, Borough
19 of Wallington number 18326, and you read this document?
20 (Appice Exhibit No. 5 marked for identification.)
21 THE WITNESS: Yes.

22 BY MR. DIGIULIO:

23 Q. Okay. And it's your understanding that this is --
24 this sets forth development approvals that were received by
25 plaintiffs?

Page 48

1 schools have a -- have in recent years had an increase or
2 decrease in student enrollment?

3 A. I'm not aware.

4 Q. You're not aware. No knowledge. Okay.

5 Have you ever talked to Mayor Dabal about the burden
6 that developments may have on the school district?

7 A. No.

8 Q. Okay. I'll take that back for you. Thank you. All
9 right.

10 So I just want to make sure we're all on the same page
11 about what you did for today. So the documents you recall
12 seeing are the resolution we just looked at and the
13 interrogatories?

14 A. Yes.

15 Q. You don't recall reviewing any other documents?

16 A. No.

17 Q. Okay. And other than the Borough alleging there was
18 not -- there was no discrimination, you don't -- you're not
19 aware of any other facts that support their defense, the
20 Borough's defense; is that right?

21 A. Correct.

22 Q. Okay. All right.

23 MR. DIGIULIO: Let's go off the record for like two
24 seconds, I just want to make sure I have nothing else.

25 THE REPORTER: Off the record.

Page 47

1 A. Yes.

2 Q. Okay. If you go to number -- the paragraphs are
3 numbered, if you go to number 11. So talking about -- the
4 resolution summarizes testimony of Brigitte Bogart, professional
5 planner; do you see that?

6 A. Yes.

7 Q. Okay. In the second paragraph it says, She testified
8 that the master plan required the properties to be jointly
9 developed with 15 low income units provided. She opined that
10 the development's effect on the surrounding properties in the
11 community would be an additional 5 to 11 school trip children
12 being admitted to the school district; do you see that?

13 A. Yes.

14 Q. Okay. And then if you go down to 15 it says,
15 Melissa Dabal, a member of the town council, testified she
16 believed the increase in the number of students to be generated
17 by the development would be greater than 5 additional students
18 and would be a burden; do you see that?

19 A. Yes.

20 Q. Okay. Are you aware of any issues during your time
21 being raised by either public or town council about new
22 developments being a burden on the school district? Have you
23 heard that at all?

24 A. Not that I recall.

25 Q. Okay. Do you know if the Borough of Wallington public

Page 49

1 (Off the record at 11:18 a.m.)
2 (On the record at 11:18 a.m.)

3 BY MR. DIGIULIO:

4 Q. Have you ever spoken to Jim Nuckel?

5 A. No.

6 Q. Have you ever -- before he passed, did you ever speak
7 to Donald Nuckel?

8 A. No.

9 Q. Jill Nuckel, their sister?

10 A. No.

11 Q. Okay. How about the owners of the Devli property,
12 have you ever spoken to them?

13 A. No.

14 Q. Okay. You don't recall speaking to anyone else other
15 than the Borough attorney about this case at all?

16 A. Correct.

17 Q. Okay. All right.

18 MR. DIGIULIO: Thank you, Ms. Appice. That's all I
19 have. Thank you so much.

20 THE WITNESS: Thank you.

21 MR. SHEPARD: Thank you.

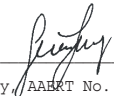

22 THE REPORTER: And 10 business days turnaround time is
23 okay?

24 MR. DIGIULIO: Yes.

25 (Deposition concluded at 11:19 a.m.)

Jennifer Appice
515
December 03, 2024

50 to 53

<p style="text-align: right;">Page 50</p> <p>CERTIFICATE OF NOTARY FOR WITNESS</p> <p>PLACEHOLDER</p>	<p style="text-align: right;">Page 51</p> <p>CERTIFICATE OF REPORTER</p> <p>STATE OF NEW JERSEY)</p> <p>)</p> <p>COUNTY OF HUNTERDON)</p> <p>I, Serena Frey, AAERT No. 3686, Digital Reporter, State of New Jersey, do hereby certify that I was authorized to and did electronically report the Deposition of JENNIFER APPICE; that JENNIFER APPICE was duly sworn on the date indicated; that a review of the transcript was requested and that the electronic recording of the proceedings was provided for transcription.</p> <p>I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.</p> <p>DATED this 13th day of December 2024.</p> <p style="text-align: right;">  Serena Frey, AAERT No. 3686 </p>
<p style="text-align: right;">Page 52</p> <p>CERTIFICATION PAGE FOR AUDIO RECORDING OF A DEPOSITION</p> <p>I, JANENE CLEARY, New Jersey CSR # 30XI00232700, a Certified Shorthand Reporter in and for the State of New Jersey, hereby certify to the following:</p> <p>That the foregoing is a true and correct transcription of the audio recording of the deposition in the above-captioned case.</p> <p>I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not financially or otherwise interested in the outcome of the action.</p> <p>Certified to by me this 18TH day of December 2024.</p> <p style="text-align: right;">  JANENE CLEARY New Jersey CSR # 30XI00232700 </p>	<p style="text-align: right;">Page 53</p> <p>WITNESS NOTIFICATION LETTER</p> <p>Date: December 13, 2024 ATTN: JENNIFER APPICE c/o Gerald A. Shepard, Esquire Pfund McDonnell, PC 139 Prospect Street Ridgewood, New Jersey 07450</p> <p>RE: NEW WALLINGTON HOME, LLC, a New Jersey limited liability company, et al. vs. BOROUGH OF WALLINGTON, et al. Date of Proceeding: December 3, 2024 U.S. Legal Support Reference Job No.: 6757446-002 Dear Madam:</p> <p>The transcript of the above proceeding is now available for witness review, and the following applies:</p> <p>The witness is requested to contact our office to make arrangements for review purposes. Counsel above ordered the transcript and is requested to facilitate the witness' review from their copy.</p> <p>Other: _____</p> <p>We respectfully request that the review be completed within 30 days. The completed errata sheet may be returned to our office at the Email address listed below for distribution.</p> <p>Sincerely, Production Department U.S. Legal Support, Inc. Email: Production@uslegalsupport.com Phone: 866-876-8757 Letter via Transcript/Mail: JAMES DIGIULIO, ESQUIRE, Esq. GERALD A. SHEPARD, ESQUIRE, Esq.</p>

Jennifer Appice
516
December 03, 2024

54

<p>1 ERRATA SHEET Page 54</p> <p>2</p> <p>3 Witness: JENNIFER APPICE</p> <p>4 RE: NEW WALLINGTON HOME, LLC, a New</p> <p>5 Jersey limited liability company, et al. vs.</p> <p>6 BOROUGH OF WALLINGTON, et al.</p> <p>7 Date of Proceeding: December 3, 2024</p> <p>8 U.S. Legal Support Reference No.: 6757446-002</p> <p>9</p> <p>10 PLEASE MAKE ANY CORRECTIONS/CHANGES BELOW AND NOTE THE</p> <p>11 REASON FOR SAME, THEN SIGN AND DATE AT BOTTOM</p> <p>12</p> <table border="1"><thead><tr><th>Page</th><th>Line</th><th>Change</th><th>Reason</th></tr></thead><tbody><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr><tr><td>___</td><td>___</td><td>___</td><td>___</td></tr></tbody></table> <p>19 Under penalties of perjury, I declare that I have</p> <p>20 read the foregoing transcript and that the facts stated in it</p> <p>21 are true.</p> <p>22 _____ Date _____</p> <p>23 JENNIFER APPICE</p> <p>24 (RESERVED FOR EXECUTION OF TRANSCRIPT REVIEW)</p> <p>25 Sworn and subscribed to before me this ___ day of</p> <p>_____, 20__.</p> <p>Notary Public _____ JENNIFER APPICE</p>	Page	Line	Change	Reason	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	___	
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	10:49	2005	30(b)(6)
Exhibits	32:6	13:14	21:4,19
	10:52	2006	31
EX 0001 Jenni	32:7	22:8 24:15	41:13,15
fer Appice 12	11	30:23 35:14	3686
0324	47:3,11	40:9	5:2
4:5 21:6	11,000	2007	37306
EX 0002 Jenni	41:24	14:11	35:7
fer Appice 12	11,868	2008	
0324	41:18	14:11 35:8,	4
4:6 25:3	11:18	10,12,17	
EX 0003 Jenni	49:1,2	2009	4
fer Appice 12	11:19	14:23	23:25 24:12
0324	49:25	2014	37:18,20
4:6 35:9	12	15:18	4kids
EX 0004 Jenni	37:19 38:2	2015	13:17,18,25
fer Appice 12	41:4	36:17	14:11
0324	12/31/2023	2016	
4:7 37:20	42:3	39:5	5
EX 0005 Jenni	13	2018	
fer Appice 12	41:4	26:7 29:14	5
0324	15	39:5 40:6	21:25 22:17
4:7 46:20	35:20 47:9,	46:18	23:3 32:9
	14	2019	34:2,22 35:4
0	16	36:17 40:6	46:18,20
	26:7 46:18	2020	47:11,17
07	18	25:12	
14:3,5	35:8	2023	6
08	18326	6:25 7:1	
14:5	26:6 46:19	16:6 19:16	6
	1996	41:13,15	22:5,17 23:3
1	13:5	2024	34:14,22
		21:3 37:19	69.8
1	2	38:2 42:4	42:3
20:23 21:3,		2027	
6,20 22:8,17	2	20:19	7
23:3 31:2,6,	21:14 23:13	21	
8 38:20	24:23 25:3,	41:8	7
10	10 38:21	24	24:8 25:12
21:13 22:13	2000	21:3	
23:4 40:7	12:2,13		8
49:22	14:11	3	
10:37	2002		8
22:25	12:13	3	24:8
10:38	2004	21:14 23:13	8,286
23:1	11:6	35:5,9	41:21
		38:21,23	

	additional	Allen	37:18,20
9	47:11,17	27:19	46:18,20
	adjacent	allowed	49:18
9	28:11	29:10	applicable
24:12	administer	amend	5:9
96	5:6	39:6	applications
13:1,2,3	administratio	amended	23:19,23
98	n	39:4	24:13 35:13
12:24	11:4	amount	36:18,24
	administrator	45:17	37:6 46:4,11
	6:22 10:3	and/or	approvals
A	11:19 18:16	24:3	28:19,22
	25:1	Androwis	29:15 46:24
A-N-D-R-O-W-I-S	admissions	20:3,5,6,12	approved
20:6	38:24	answer	42:7 45:22
A-P-P-I-C-E	admitted	7:13 8:18,	arbitrary
5:21	39:4 47:12	21,25 9:2,4,	36:18,24
a.m.	affiliates	17,19 26:18	37:1 46:6
22:25 23:1	22:7	30:9 31:11,	area
32:6,7 49:1,	affirm	22,25 39:3	42:16
2,25	6:1	40:3,12	around
AAERT	affordable	41:17	15:18 40:6
5:2	24:3,14	answers	asked
able	29:1,9 30:24	7:20 8:9	17:25 18:2
29:9	40:13 42:6	38:4,5,10	40:19 41:11
above	agents	anybody	asking
21:23	22:7	42:10	9:11
absolutely	ago	anyone	asks
30:19	7:1 17:5	26:21,24	38:23 40:7
abuts	agree	36:10,11	assessed
32:23 33:18	5:6 10:9	49:14	23:14,19
access	agreed	anytime	assessor
22:3 32:12	23:3 45:16	7:8	39:25 40:1,5
34:12	agreement	apartments	assume
accordance	44:13,17,21,	29:10	9:7
5:9	24	Apologies	attempting
accurate	ahead	41:9	7:13
7:24 38:10	8:25	appeals	attempts
Act	allegations	27:23	29:15
29:4,8,25	40:14	appearances	attend
acting	alleged	5:11	27:12 37:5
22:1 32:11	30:15 40:22	appice	attendance
action	alleges	5:20 6:11,16	27:9
21:23 22:15	34:16	20:23 21:2,	attended
38:25 40:16	alleging	3,6 24:23	24:1
	34:18 48:17	25:3,10 31:2	attorney
		35:4,5,9	27:17,19

31:12 38:12	believe	41:11,12,13,	
44:9,10	13:13 19:3	18 42:7	C
49:15	20:21 33:5	43:19,21,25	
attorneys	38:7 40:6	44:6,9,10	calculating
18:19 45:2	44:9 45:17	45:2,9,21	13:23,24,25
audio	believed	46:4,8,18	call
5:7	47:16	47:25 48:17	33:14
automatically	BER-L6285-15	49:15	called
17:6	40:17	Borough's	6:12
Avenue	Bergen	26:18 30:4	capacity
28:6	35:7 36:17	37:18 38:11	10:2 22:2
aware	42:16	48:20	23:9 32:11
20:18 24:7	best	boroughs	capricious
25:18 28:25	8:17 35:3	29:11	36:19,24
29:2,17	better	bottom	37:1 46:7
34:1,3,10,	39:23	35:20	career
13,15,21,22	bills	break	14:21
35:13,19	39:21	9:16,18	Carlstadt
40:13 43:19,	binding	breaks	43:3,12
21,23 44:5	10:17	9:21	case
46:11,12	bit	brief	7:14 10:4
47:20 48:3,	10:22	14:13,16	20:7 24:20
4,19	Board	37:16	25:10,17
	5:17 28:21,	briefly	31:20,24
B	22 37:5	18:15 21:11	40:14,20,23
	Bogart	37:16	43:20,22
BA	47:4	Brigette	44:4,8,14,24
11:14 12:1	border	47:4	46:3 49:15
18:10	33:3	broad	cases
back	borough	24:24	26:3
9:3 14:8	5:16 6:21,22	brought	cell
30:23 31:2,5	10:5,13,18	25:17	15:7,8
35:14 36:12	16:5,8 17:10	Brown	census
48:8	18:10,21	39:25	41:17
background	19:5 21:4,	build	certain
10:22 18:1	12,19 22:1,	29:9,10	10:8
based	3,6,15 24:1,	33:9,10	certificates
8:5 38:5	15,25 26:6,	Building	24:9
bases	25 27:5,17,	15:7	certification
46:8,11	19 30:10,24	built	38:4
basis	31:12 32:11,	42:7,10	certification
29:25 30:7,	12,17 33:2	burden	s
15	34:4,10,15,	47:18,22	11:17,20
beginning	17 37:10	48:5	chance
5:12	38:11,24	business	19:7
behalf	39:6,24	10:3 11:4,19	change
10:17	40:8,13	18:16 49:22	14:21

changed	40:8	council	date
42:4	complete	16:22 17:1,	35:14
changes	8:16 9:19	2,23,25	dated
20:17	concluded	18:2,3	25:11 26:7
children	49:25	19:17,24	35:7 37:19
47:11	conducted	20:15,17	dates
choosing	44:6	27:3,10,13	8:2
14:18	Congratulatio	43:14 44:23	dating
claim	ns	47:15,21	30:23
30:1,7	7:3	counsel	day
claims	consider	5:12 7:21	7:18 10:21
10:4 21:22	43:1	8:23 9:22	day-to-day
25:17 30:4	construction	27:16 31:18,	18:18,20
31:6,24	24:3	20 38:14	days
37:11 39:20	contemplated	39:13	49:22
clarification	24:2	County	DC
9:7,12	contends	36:17 42:16	14:17
clear	38:24	courses	deal
9:12 28:1	continue	12:7	24:8 41:4
30:19	35:23	court	decade
Clearwater	continued	6:20 7:11,23	15:17
15:1,4,9,14	36:7	8:8 25:11	December
close	continues	29:18 35:6,	20:12 25:12
15:17 24:19	20:19	24 36:6,23	41:13,15
41:14	continuing	courts	decision
coffee	11:20	30:23 36:17	35:6,17
9:15	contract	46:6	decisions
communication	18:19	cover	29:18 36:20,
14:22 15:1	contractor	21:5	23 46:6
communication	15:14	covered	declarations
s	contracts	22:16	38:24
11:13 21:25	18:1	create	declaratory
31:17 32:10	corporate	5:6	40:16
34:3,23	10:5,13,17	curious	declare
community	22:18 25:22	16:8	35:21
47:11	31:23 46:10	current	decrease
company	correct	19:24 27:19	48:2
14:19 16:3	16:7 21:18	28:19 40:1	deemed
complaint	23:5 27:21	cut	36:23
24:20,23	30:21 31:21	8:17,20	defendant
25:10 26:18	33:11,13		5:16 39:5
30:20 31:3,	35:1,15	<hr/>	defense
10,25 39:4,9	39:11 45:20	D	30:4,11
46:2	48:21 49:16	<hr/>	48:19,20
complaints	correction	Dabal	defenses
22:5 34:14,	5:10	47:15 48:5	21:22 30:9
17,20,24		Dabal's	31:7,24
		20:19	

degree 10:25 11:8	development 22:2 23:14	29:24 30:5, 15,16 34:15,	drafted 39:13
degrees 11:16	24:13 29:15, 19 32:12	16,18,24 40:8,23	duly 6:12
delaying 46:5	46:5,24 47:17	48:18	Dumont 19:6,7
demographics 24:2	development's 47:10	discriminator y 30:7	<hr/> E <hr/>
denial 36:17,23 46:11	developments 47:22 48:6	discuss 27:18	E-U-G-E-N-I-U-S-Z 20:7
denials 46:8	Devli 32:24 49:11	discussed 27:10 34:16	easier 8:8
denied 46:4	Dick 27:19	discussing 28:2	East 32:20,21 43:3,10
dep 31:5	different 36:22	discussion 38:11	Ed 39:25 40:4
deposed 7:5 20:7	Digital 5:2	distance 8:2	education 10:24 11:21
deposition 5:2 14:10 21:4 49:25	Digiulio 5:13 6:7,10, 15,19 19:13 20:5,9,25 21:1,8	district 6:20 25:11 47:12,22 48:6	effect 47:10
deputy 16:10,14,19, 20 17:6	22:22,24 23:2 25:5 30:10,13 32:3,5,8 35:11 37:22	Division 35:7	efforts 34:10 37:11
describe 18:15 36:11	45:3,4 46:22 48:23 49:3, 18,24	docket 40:17	eight 14:18 15:10
designated 10:5,9 21:12,16,19 31:6,23	direct 8:24 9:2	document 21:9 26:6 31:14 35:7 38:17 43:25 46:13,19	either 16:22 23:18, 23 25:1 36:19 47:21
designee 10:5,13,17, 18 22:18 23:10 25:22 31:24 46:10	direction 9:3	documented 44:20	EJD 16:2
detail 29:25	director 17:12	documents 22:14 25:23 26:15 31:18 38:16 41:2 43:20,21 44:7 48:11, 15	elected 6:21 17:4
determine 46:7	disclose 31:17	doing 16:11 17:25	electronic 44:7
develop 30:24 34:11 35:13	discovery 22:11	Donald 25:1 33:18 40:15 49:7	elicit 7:13
developed 47:9	discriminatin g 29:11	draft 44:17	emails 44:3,7
developing 34:4	discriminatio n 22:6 25:18		employed 12:12
			employee 22:1 32:10

employees 18:18 22:7 27:5 34:4 44:24	experience 16:11,13	five 13:13 40:10	generally 10:10 13:19
	explained 36:3	Following 19:21	15:6 16:21
employment 13:3,4,8 14:12	<hr/>	follows 5:3 6:13	18:16 28:8
	F <hr/>	foreclose 23:11	30:3 42:18
end 7:18 19:25	facts 48:19	form 16:23	43:1 45:15
ended 14:17	factual 30:11	forth 9:3 21:22	generated 47:16
engaging 36:12	fair 22:16 24:18	31:7 41:11	Gerald 5:15
enrollment 48:2	29:3,8,25	46:9,24	Gerry 22:20 32:3
ensure 38:10	34:22 35:16	found 35:20,25	gestures 8:10
entered 45:10	37:11,15	36:17 46:6	getting 15:17
Entertainment 13:17,18 14:1,11	Federal 6:20 25:11	four 12:22 15:16	give 6:2 9:3
estimate 8:2	feel 7:8 8:21	16:18 17:14	15:10 35:2
estimating 8:3	9:16	free 7:8 8:21	45:16
et al 5:17	figure 30:11	9:16	goes 39:1
Eugeniusz 20:4	filed 21:23 25:10	Frey 5:2	going 7:11 8:10,
Everyday 14:13	31:7	front 25:9 26:3	14,15 9:7
EXAMINATION 6:14	final 5:8	full-time 18:22	14:8 16:12
exclusionary 35:23 36:8, 11	finance 13:20 14:15	fun 14:9	17:16 35:4
executed 44:13,20	18:1	future 9:1	37:17 46:2, 17
executive 27:9,12 45:2,6	find 7:14 26:4	<hr/>	good 6:16,17
Exhibit 21:6 25:3 35:9 37:20 46:20	44:7	G <hr/>	38:23
	finish 8:13,16 9:3, 17	gathering 44:3	government 16:23,24
	finished 8:18,21	gave 31:12	government- issued 5:23
	firm 5:15	Gene 20:11,12	great 5:24 6:10
	first 5:19 6:12	general 10:12 14:14	8:3 10:21
	13:8 14:25	25:16 33:6	greater 47:17
	17:4 18:11	45:13	guess 8:1 35:16
	24:25 38:20		39:12 42:10

	home 28:3 39:3	inquiries 24:13	Jill 49:9
H	homes 29:10 40:16	interest 38:25	Jim 6:18 25:1
half 19:3	housing 24:4,14	interrogatori es 22:10,14,17	49:4
hand 5:25 8:10	29:3,8,10,25	37:18 48:13	job 13:16 14:25
handle 18:18 44:10, 11	30:24 37:11, 15 40:13	interrogatory 23:4	18:22 19:14, 16
happen 7:11	42:6	invalid 35:22,25	jointly 47:8
Harris 35:6,20	I	36:7	Judge 35:6,20
he'll 8:24 9:3	ice 28:12	investigation 38:6,9,13	judgment 40:16
head 8:10	idea 8:15 28:19, 23 29:1 42:4	involved 27:22 44:2, 12	Justyna 20:16 43:16, 17
headed 16:12	43:4	involvement 37:10	K
Health 14:13	identificatio n 5:23 21:6	issuance 24:8	K-H-A-L-D-O-
heard 25:1 29:3	25:3 35:9	issue 24:16	U-N 20:6
34:20 35:24	37:20 46:20	issues 18:21 23:12	Kazimir 18:25
36:10 37:1, 15 47:23	identified 22:13	40:13 47:20	keep 20:24 31:4
Hector 19:9,14	identify 40:8	J	35:3
held 17:22	improperly 46:4	J-E-N-N-I-F-	Khaldoun 20:3,5
helpful 7:14 18:3	including 22:6 41:12	E-R 5:20	kind 11:17,21,24
high 11:16 13:4	income 24:4,14 47:9	James 5:13	15:6
higher 42:1	increase 47:16 48:1	January 22:8 26:7	kindly 5:22
highest 10:24	independent 38:13	40:9 43:15	know 8:5 9:6 14:9
Hispanic 41:14	indiscernible 26:4	46:18	19:1,14,17, 19 20:14,17
history 29:13,14	individuals 5:17	Jasontown 33:22	27:25 28:1, 4,5,8,9,14, 21 30:3
hold 17:10,18	information 7:14 41:12	Jennifer 5:20 6:11	31:18 32:15
	initial 25:24 26:1	Jersey 5:5 6:20	33:8,21
		25:11	40:2,4,20 42:6,9,10

43:7,11,13	liaison	low	math
44:6 45:9,	17:19,20,21	24:3,4,14	42:3
11,21 46:1	licensed	47:9	matter
47:25	5:5		6:2 31:7
knowledge	licensure	M	mayor
7:15,16 10:3	11:20		16:10,14,17,
23:9,10,12,	lieu	made	19,20 17:6
18 24:5,10,	45:10,14,18	22:6 38:25	20:19 48:5
16,19 36:13,	life	40:8,14,15	Mcdonnell
22 38:6	8:8	43:25	5:16
39:15 41:5	limit	Main	mean
44:16,19	7:15	28:6 33:3	13:21 22:20,
48:4	line	make	23 30:8
	19:22	8:8,9,11	37:16 40:2
L	litigations	9:12 22:20	45:15
	27:16	28:1 30:18	means
land	little	33:15 35:20	10:13
35:21,25	10:22 23:10	46:2 48:10,	meet
36:6,18,23	42:1	24	26:21
46:4	live	Manage	meetings
large	7:23 42:19	18:18	23:25 24:6
32:23	lived	management	27:13 37:5
Latino	42:14	15:5	Melissa
41:14	lives	manager	47:15
law	42:11	15:25	member
5:9,15 35:7	local	map	7:1 20:15
lawsuit	24:4	33:24	43:14 47:15
6:19 26:24	located	marathon	members
27:3,6,10	28:5 32:16	9:15	19:17 27:3
34:16 35:6	long	March	44:23
41:2 45:6	11:23 13:11,	35:7	members'
46:14	25 14:8	Marciniak	19:24
leave	15:8,15	20:16 43:16,	memory
9:18	16:21 17:3,	17	14:10
LEC	13 19:1,14	mark	mention
15:21	42:13	35:4 37:17	40:20 45:1
left	look	46:17	merged
15:21 16:2,5	26:15	marked	15:24
legal	looked	21:2,6 25:3,	met
30:9	26:11 48:12	9 35:9 37:20	6:18
letter	Looking	46:20	Michael
39:18	25:13	master	18:25 19:1,
letters	looks	47:8	8,19,20
44:3	23:3	master's	minute
level	loop	10:25 13:7,	33:24
10:24	24:19	10	money
			45:17

months 14:18 15:11 16:18	nine 15:10 42:15	O-L-M-O 19:11	23 29:1,3, 12,18,23
morning 6:16,18	Nodding 8:9	oath 5:6 7:22	30:3,6,18 31:2,10,14, 18,22 32:2, 9,15,19,21
Morningside 23:15 28:7,9 40:15,24	non-topic 23:12	object 8:24	33:1,6,12, 14,17,20,25 34:7,10,14, 20,22 35:2, 16,19 36:3, 5,10,15,22 37:4,8,10,23
motion 9:1	note 30:8 45:1	objection 30:8 45:1	38:1,4,9,13, 16,19,21 39:3,9,12, 15,23 40:1, 7,12,19,22 41:1,4,8,11, 24 42:6,9, 13,16,18,21
motions 7:21	notice 5:3 10:1 21:3 31:5 39:21	objections 9:1	43:1,10,14, 17,19,24 44:2,6,12, 16,19,23 45:9,18,21, 24 46:1,13, 17,23 47:2, 7,14,20,25 48:4,8,17,22 49:11,14,17, 23
moved 19:23	notices 41:5	obtain 29:15	Olmo 19:9,11
municipal 16:13	November 6:25 16:6 19:16	obviously 23:5	one 16:18 20:2, 3,10 26:11 29:13 31:4 32:9 36:3 46:13
municipality 17:7 18:14	notary 5:5	official 22:1 32:11	online 20:24
Music 12:16,17	Nuckel 25:1,2 33:19 40:15 49:4, 7,9	officials 6:21 24:1	operations 18:19,20
<hr/> N <hr/>		okay 5:24 6:24 7:7,10,24 8:6,8,11,13, 18,21 9:4,8, 13,19,21,22, 24 10:1,12, 20 11:1,5,7, 12,16,19 12:1,3,6,10, 12,24 13:1, 7,11,16,25 14:7,14,20, 23,25 15:2, 6,20,23 16:4,8,16 17:3,7,10, 20,22 18:10, 14,24 19:1, 19,24 20:12, 14,22 21:9, 16,18,25 22:13 23:3, 7,25 24:8, 12,18 25:9, 16,19,21 26:9,12,15, 24 27:2,5,8, 12,19,22,25 28:13,16,17,	opined 47:9
name 5:19 6:18 18:24 19:10 20:23	number 21:20,25 22:5,13 23:4,25 24:8,12 31:6,8 32:9 34:2 35:7 38:23 40:7, 17 41:8,21, 24 42:4 46:19 47:2, 3,16		opportunity 7:20
nature 30:9	numbered 41:9 47:3		
need 8:4 9:17 11:20,24 20:5	numbers 38:20 41:4		
negotiated 45:17,18	numerous 46:4		
negotiations 18:19	<hr/> O <hr/>		
neighbors 43:2	O'TOOLE 5:13		
never 23:22 29:21 30:20,25 35:17 37:8 45:5			
night 12:7,9			

order	17:4, 7, 11	permit	planner
31:4 35:3, 21	18:6 19:20	30:24	47:5
ordered	42:14	person	planning
5:8	part	9:11 10:14	5:17 22:2
ordinances	14:9 15:3	personal	23:14, 19, 23
24:2	16:22	10:3 23:9,	24:13 28:21,
original	partially	12, 18 24:5,	22 32:11
26:10	44:13, 20	10, 15, 19	37:5
originally	parties	38:5 39:15	pleading
42:16	5:5, 11 6:5	41:5 44:16	21:23
outside	Partners	personally	pleadings
18:11	15:13	10:2	31:7
overlap	party	Pfund	please
17:23	38:25	5:16	5:11, 18, 24
oversee	Passaic	Phoenix	8:9, 11, 13, 20
18:20	43:3, 8	11:2 12:4, 6	9:11
owned	passed	phone	point
25:6 32:23,	49:6	15:7, 8	8:1, 14
24 33:18	past	phonetic	Polish
owners	35:23 36:8	20:11 27:20	43:18, 19
49:11	Paterson	pick	population
	11:11 12:3,	16:25	16:25 24:1
	21	picks	41:12, 13
P	pay	16:24	42:23 43:5
	45:16	Picture	populations
page	paying	5:24	42:21
21:13, 14	13:22 39:18	PILOT	portion
35:19 37:23	45:18	45:10, 11, 13,	34:8
38:5, 19, 20,	payment	22	position
21 48:10	45:14, 18	plaintiff	6:24 16:16
pages	payments	30:23 39:3	17:4 18:10,
41:9	39:5	plaintiff's	11 19:2
paid	pedestrian	5:12 22:14	46:1, 3
13:9 17:14	22:2 32:12	23:15 24:9	positions
paper	pending	26:2 27:23,	17:10 18:6, 8
28:4 33:14,	6:20 27:15	25 28:16	possible
17	percent	29:25 35:13	9:13
paragraph	42:3	36:18, 23	post
47:7	percentage	37:6 46:1, 3	11:16
paragraphs	41:13 42:2	plaintiffs	potential
47:2	Perfect	5:14 6:19	44:24
Paramus	5:23 6:9	25:10, 17	potentially
42:20	period	29:15 40:14,	7:15 34:5
parcels	14:13	23 46:25	practice
28:2	periodically	plan	9:1
Park	12:7	47:8	practices
16:10, 14, 23			35:23 36:8,

11	projects	questioning	received
predecessor	15:6	7:15	46:24
18:24 19:7	proper	questions	receiving
preparation	39:21	7:8,19 8:6	39:21
25:22 26:16,	properties	9:24 39:24	recent
22	23:15,20	quick	48:1
present	24:10 27:23	34:2	recollection
5:23 22:8	28:1,5,8,11,	quickly	24:23 25:14
24:15 40:9	16,17,20	23:8	record
preserving	29:19 47:8,	quote	5:4,7,12,19
8:25	10	41:14	6:6,18 8:10,
president	property		16 9:7,12
16:3	23:15,16		21:1 22:24,
pretty	24:9 25:6,25	R	25 23:1
10:14 18:20	26:1,2,13		32:5,6,7
prior	27:22 29:16	race	48:23,25
11:7 12:21	32:23 33:3,	23:7	49:1,2
13:5 16:20	8,18,21,22	Rachel	recreation
19:16 24:25	35:14 39:4,	20:8	17:12
25:21 42:12	16,21 41:4	Rachelski	reelected
private	45:19 46:5	20:4,6,8	20:3,10
23:25	49:11	railroad	referenced
probably	propounded	33:18	21:23 26:9
8:14 10:20	22:15	raise	referencing
35:16 40:3	protest	5:24	9:11
43:8	39:18	raised	referring
proceed	provided	47:21	28:17
6:9	5:10 31:20	range	refresh
proceeded	47:9	14:5	24:22 25:13
5:3	public	read	regard
proceeding	5:5 18:8,11	18:1 28:3	23:13
5:7 7:23	23:25 36:6	30:20 31:10,	regarding
process	47:21,25	11,12,25	22:2 23:18
7:7,9	pursuant	39:9 46:2,19	27:6 32:11
produce	5:3	recall	regulations
5:8 44:3	put	19:15 32:1	35:22,25
produced	6:6 20:23	36:2,9 38:1,	36:7
43:20,21	21:1 30:10	9 40:21,25	related
production		41:3 42:5,8	10:4 24:5
43:25	Q	44:1,2,15,18	26:2,13
professional		45:8,9,23	27:6,23
47:4	question	46:13 47:24	29:19 30:25
program	7:13 8:13,	48:11,15	34:4,18,23
12:10	15,24,25	49:14	39:15,20,21
project	9:8,10,17,18	receive	41:2,6 45:6
15:5,25	11:23 24:24	7:18 11:1,	relates
	31:23 38:23	10,20	23:13

relating 40:13 46:14	reran 16:18	20:1,20 21:23 22:8,	14
relevant 44:7	reserves 39:6	10 23:22 26:3 31:25	school 11:16 13:4 47:11,12,22 48:6
reliable 38:7	residence 17:8 18:12	33:2,4,12 35:3,14 37:6 39:6,10	schools 48:1
relief 30:23	residents 16:25 34:12 41:18,21	41:6,24 45:7 46:15 48:9, 20,22 49:17	scope 7:15,16
relocate 14:18	resigned 17:24	rink 28:12	Scrivo 5:14
relocated 14:17,19	resolution 25:24 26:1, 2,6,12 29:13 31:15 46:14, 18 47:4 48:12	road 33:10,12	seasonal 13:4
remain 35:22	resolutions 24:2 46:9	roadway 33:14,17 34:4	second 31:3 38:20 47:7
remember 19:7 40:22 41:1	respect 40:12	role 10:20 11:19 13:19 15:4 18:17	seconds 48:24
remind 9:21	response 10:17	Roselle 16:10,14,23 17:4,7,11 18:6 19:20 42:14	see 18:20 21:5, 14 23:16 24:22 31:8 32:13 33:23 36:19 38:7 39:1,6 40:10,17 41:15,18,22 43:24 47:5, 12,18
render 36:6	responses 22:11 37:18 39:6	route 16:8	seeing 32:1 41:1 44:15 48:12
rendered 29:19 35:6	responsible 13:22	royalties 12:20 13:20, 21,22,23,24 14:15	senior 15:25
repeat 19:10	restrooms 9:16	runs 33:17	sense 22:20 33:15
report 27:15	review 5:10 7:20 25:22 26:18 38:16 43:24 44:7	Rutherford 32:20,21 43:3,10	separate 16:22
reporter 5:3,4,18,22 6:5,9 7:11 8:8 19:10,12 20:24 35:10 48:25 49:22	reviewed 23:22 26:5 29:12,21 31:13,14,18 37:6	S	September 21:3 37:19 38:2
represent 6:19	reviewing 41:1 46:14 48:15	S-K-I 20:8	Serena 5:2
representatio n 46:3	right 5:25 7:12 10:21 12:3 16:1 19:25	sales 24:9	served 10:1 16:21
representativ es 22:7		says 38:5 40:12 41:17 47:7,	service 36:6
requests 22:14			
required 47:8			
requires 23:10			

session 27:12 45:2,6	similar 19:21 24:12	9:24 12:24 14:21 40:4	T
sessions 27:9	29:9	state	
set 21:22 31:7 41:11 46:8	sister 49:9	5:5,11	take 9:16,18 12:7 15:10 16:16 21:3 31:3 36:15 43:20 48:8
sets 46:24	sitting 8:5	Station 22:3 32:13, 15 34:5,11, 23	taken 5:2 8:10
settle 37:11	size 42:23	step 18:2	taking 7:12 19:16
settlement 44:13,17,20, 24	Skyfield 15:13,20,21	stipulations 6:6	talk 44:23
seven 17:16	solemnly 6:1	stop 7:8	talked 21:11 48:5
share 37:11,15	Sony 12:16,17 13:9,11,12	Street 33:3	talking 28:14 33:21 47:3
Shepard 5:15 6:8 8:23 22:23 26:21 30:8 32:4 45:1 49:21	sort 32:23	student 48:2	tax 24:9 27:23 39:4,21,25 40:1,4 41:4 45:16,19
show 10:8 20:22 21:1 24:22 33:23 35:2,4 36:16 37:17	sought 30:23	students 47:16,17	taxes 23:14,19 24:9 39:16 45:14
showed 26:19 31:5	sound 41:24	studies 12:4	TEG 15:24
showing 26:5	sources 38:6	subparts 39:1 40:10	telecom 14:22,25 15:22
shown 21:2	speak 9:22 49:6	suited 39:23 40:3	tell 8:3 27:8
side 28:9,11 32:16,21	speaking 38:14 49:14	summarizes 47:4	term 9:11 20:19 37:1
sign 22:10	speculate 8:4	support 48:19	terms 19:24 44:17, 19
signature 5:10 37:24	speed 23:11	sure 8:9,11 9:12 10:21 18:5 26:11 28:1 30:18 35:20 40:4 48:10, 24	test 14:10
signed 23:4 38:16	spell 5:18	surround 42:22	testified 6:13 35:12 45:5 47:7,15
signing 38:1	spoken 26:24 27:2,5 49:4,12	surrounding 47:10	
	spokesperson 10:14	swear 6:1	
	Sprint 15:3	sworn 6:12 7:22	
	stack 26:3		
	start 6:24 17:15		
	started		

testify 34:24	told 31:16	38:19 40:7	units 28:24 29:1
testifying 10:15	topics 10:8,9 21:13	turnaround 49:22	42:7 47:9
testimony 6:1 9:22 47:4	22:13,16,17 23:4,8 32:10	two 12:5 14:2,3 15:22,25 17:14 19:3 20:3 28:2,17 48:23	University 11:2 12:4,6
Thank 5:22,24 6:5, 17 7:4 19:12 20:25 48:8 49:18,19,20, 21	towers 15:7,8	two-year 12:10	unpaid 17:14
thing 14:15 15:22, 24 31:16	town 32:19 47:15, 21	typical 45:19	unreasonable 36:19,24 37:2 46:7
think 26:9 29:13, 23 31:22 35:5,12 39:25 41:5,8 45:5	towns 42:18,22 43:1	Typically 8:24	<hr/> v <hr/>
thought 19:21	track 20:24	<hr/> U <hr/>	valid 5:23
three 16:11 17:5 19:4 36:22 46:6	tracks 32:16,23 33:4 34:8	U.S. 41:17	various 6:21 36:18
time 6:6,7,8 8:2, 23 9:16 14:8,16 17:23 40:3 41:18 45:24, 25 47:20 49:22	train 22:3 32:13, 15,16,23 33:3 34:5,7, 8,11,12,23	Uh-huh 39:2	verbal 8:9,11
timeframe 14:11,23	transcript 5:8,9 7:18	ultimately 19:5	vice 16:3
times 9:2	transcription 5:8	unconstitutio nal 35:22 36:1,7	vote 16:24
today 7:11,22 8:4, 5 10:1 25:21 26:16,22 34:25 41:25 48:11	transcripts 37:8	undergraduate 11:8	voted 17:5
	treat 7:22	understand 7:16 8:4 10:6,10,20, 23 21:11 30:3 33:17	votes 17:1,2
	trial 7:21 9:1	understanding 10:12 21:18 25:16 29:8, 14,23,24 30:6,14,22 31:19 32:22 33:1,4,6 42:21 45:13 46:23	<hr/> W <hr/>
	trip 47:11	understood 9:8 10:18 22:22	walk 7:7
	truth 6:2,3		walkway 34:5,11
	truthful 7:24		Wallington 5:16,17 6:21,22 16:5,9 18:10,16 23:16 24:25 25:7 26:6 28:3,8 32:17 34:11 35:21, 24 36:12 39:3 40:15, 16,24 41:18 42:22 43:2
	try 8:13 35:3		
	trying 30:11 46:7		
	turn 35:19 37:23		

45:10,21	49:20
46:19 47:25	woman
Wallington's	43:17
21:4 35:25	work
36:23 37:11	13:12 15:13
39:16	18:19 23:10
want	worked
8:1,4 19:3	12:16 13:11
30:18 31:4,	14:13,19
17,18 35:2,	working
20 38:19	13:9 14:21
48:10,24	worries
wanted	34:1
33:9	write
Washington	18:1
14:17	written
water	22:11
9:15	wrong
way	21:19
33:2,4	
went	
15:13,21	
16:2 19:5,6	
31:16 32:9	
Wesmont	
22:3 32:12,	
15 34:5,11,	
23	
white	
41:14,21	
42:3 43:4,8,	
17	
William	
11:11 12:3,	
21	
Wireless	
16:2	
withheld	
39:4	
withholding	
39:16	
witness	
5:6,10,18,	
20,22 6:4,12	
19:11 21:4,	
7,20 25:4	
37:21 46:21	

Y

yeah

5:17 10:16

13:3,15 14:6

19:21 20:25

22:23 24:24

26:5 30:10

32:4 42:24

45:3

year

7:1 12:1

15:10 16:17,

19,20 19:3,

25

yearly

16:17

years

12:5,22

13:13 14:2,3

15:16,22,25

16:11 17:5,

14,16 36:5

42:15 46:5

48:1